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LETTER DISCUSSING HOW TO ACHIEVE NAVY REQUESTED VARIANCE MILLINGTON
SUPPACT TN
5/19/1995
TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

21st Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37243-1530

May 19, 1995

L. W. Elkins, LCDR, CEC, USN
Public Works Officer
Naval Air Station Memphis
7800 3rd Avenue
Millington, Tennessee 38054-5045

Dear Commander Elkins:

Commissioner Dills referred your letter dated May 10, 1995 to me for a reply. The Commissioner does not have the authority to grant the variance that you have requested. However, I believe that it is possible to achieve the desired result in at least two different ways.

First, the Water Quality Control Board is the authority that promulgates the rules which classify groundwater uses. Therefore, the Navy could petition the Water Quality Control Board to amend its rules and reclassify the subject aquifer. A down side to this approach is the time that it will take to accomplish this action. Once the Navy filed a Petition for Rulemaking the matter would be set on the Board's agenda. Assuming that the Board granted the petition, the rule would have to be drafted, the proposed rule public noticed, an opportunity for public input allowed, and then the Board would have to approve the final rule. At this point, the rule would be ready to begin a statutory review process. From start to finish, the rulemaking procedure takes anywhere from six months up to slightly more than a year. Even the longer projected time can be significantly extended if there is anyone opposing the rule's adoption.

A second way to proceed is for the Navy to rely upon the Department's enforcement discretion. That is, if our Division of Water Pollution Control agrees that 1.0 ppm TPH is an appropriate clean-up level for this particular aquifer, then the Department can simply state that it does not plan to pursue any further enforcement if the agreed upon clean-up level is achieved. The down side to this approach is that the Water Quality law allows for enforcement through citizen complaints or lawsuits. Thus it would be possible for someone other than the Department to attempt to require a more stringent clean-up. In this particular case this seems to be a relatively small risk since it seems unlikely that the Board or a court would view this as an abuse of discretion.

If you wish to discuss these options in more detail or have any questions, please give me a call at 615-532-0220, or contact Mr. Clinton W. Willer of the Division of Superfund at (615) 532-0909.

Sincerely,

Wayne K. Scharber
Deputy Commissioner for Environment

cc: Paul Davis, Division of Water Pollution Control, TDEC
Clinton W. Willer, Division of Superfund, TDEC